

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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**RSA No.1884 of 1992(O&M)
Date of Decision : 08.12.2017**

Ex-Constable Hoshiar Singh

..... Appellant

Versus

Haryana State through Collector Distt. Gurgaon
and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. Jai Vir Yadav, Advocate
for the appellant.

Mr. Ashok S.Chaudhary, Addl. A.G., Haryana.

AJAY TEWARI, J. (Oral)

This appeal has been filed against the judgment of the lower appellate Court reversing that of the trial Court and thereby dismissing the suit filed by the appellant.

The appellant was working as a Constable having been appointed on 11.11.1974. It is alleged that on 02.02.1986 after getting off duty he got drunk and misbehaved with certain public persons. He was infact taken to the police station but refused to give alcohol and urine samples to determine whether he was under the influence of alcohol. After having being charge-sheeted in a regular inquiry he was imposed punishment of dismissal from service. His appeal and revision having been rejected he filed the instant suit. The controversy now lies within a very narrow campus i.e. whether the act of drinking and misbehaving is the gravest act of misconduct.

Learned counsel for the appellant has argued that this can not be the gravest act of misconduct and as per him an even graver act of misconduct would have been if the appellant had been on duty but in this case he was not on duty. Further he had not killed anybody in police custody. He had not raped a girl in the police station. In the circumstances, as per him the punishment order should be set aside.

On the other hand the learned Additional Advocate General has argued that a member of a disciplined force is supposed to be on duty at all time. He has thus defended the order of punishment.

In my opinion the views expressed by both the learned counsel are too extreme. No doubt the act alleged against the appellant is misconduct but is it the gravest act of misconduct? The examples given by the learned counsel for the appellant clearly show that there are other graver acts of misconduct and to these many more can be added. For instance the appellant was not alleged to have released a criminal after taking money.

In the circumstances, it has to be held that this act of the appellant was not the gravest act of misconduct. However that does not mean that the order of punishment has to be set aside in entirety because the act of the appellant was definitely a serious act of misconduct.

Learned Additional Advocate General has relied upon ***Union of India and another vs S.S.Ahluwalia, 2007(7) SCC 257***, where the Supreme Court held as follows :-

“.... The scope of judicial review in the matter of imposition of penalty, as a result of disciplinary proceedings, is very limited. The Court can interfere with the punishment only if it finds the same to be shockingly disproportionate to the charges found to be proved. In such a case, the Court is to remit the matter to

the disciplinary authority for reconsideration of the punishment. In an appropriate case, in order to avoid delay the court can itself impose lesser penalty.....”

In the present case the punishment of dismissal is clearly and unconscionably disproportionate to the infraction and I thus deem it appropriate to reduce it to compulsory retirement. Let the respondents now work out his retiral dues and pay them to him within a period of three months from the date of receipt of certified copy of this order, failing which, the appellant would be entitled to claim the same with interest @ 8% per annum from the date/s the amount/s fell due till the date of payment.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

08.12.2017
pooja sharma-I

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No